

No. 89-431

Supreme Court, U.S.

FILED

DEC 11 1989

JOSEPH F. SPANIOLO, JR.  
CLERK

**In the Supreme Court of the United States**

**OCTOBER TERM, 1989**

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**YELLOW FREIGHT SYSTEM, INC.,**

*Petitioner,*

**vs.**

**COLLEEN DONNELLY,**

*Respondent.*

---

**ON WRIT OF CERTIORARI TO THE UNITED STATES  
COURT OF APPEALS FOR THE SEVENTH CIRCUIT**

---

**JOINT APPENDIX**

---

**JEFFREY IVAN PASEK\***  
**ALAN M. LERNER**  
**COHEN, SHAPIRO, POLISHER,**  
**SHIEKMAN AND COHEN**  
**12 South 12th Street**  
**Philadelphia, PA 19107**  
*Counsel for Petitioner*

**MICHAEL W. RATHSACK\***  
**77 West Washington Street**  
**Suite 508**  
**Chicago, IL 60602**  
**JOHN J. HENELY**  
**75 East Wacker Drive**  
**Suite 2200**  
**Chicago, IL 60601**  
*Counsel for Respondent*

**\*Counsel of Record**

---

**Petition for Certiorari Filed September 11, 1989**  
**Certiorari Granted November 6, 1989**

504

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14. United States Court of Appeals for the Seventh Circuit Opinion Filed April 28, 1989 ..... A-1\*

# **RELEVANT DOCKET ENTRIES IN THE COURTS BELOW**

No docket entries appear in the record of the Circuit Court of Cook County, Illinois. A chronological list of relevant proceedings follows:

1. May 22, 1985                      Summons issued
2. May 22, 1985                      Complaint filed
3. June 28, 1985                    Notice of Defendant's Motion to Dismiss
4. June 28, 1985                    Defendant's Motion to Dismiss
5. July 17, 1985                    Notice of Plaintiff's Motion to File Amended Complaint at Law
6. July 17, 1985                    Motion to File Amended Complaint at Law
7. July 23, 1985                    Defendant's Response and Objection to Plaintiff's Motion for Leave to File Amended Complaint
8. August 9, 1985                   Agreed order

## **United States District Court for the Northern District of Illinois**

1. August 14, 1985                  Defendant's Petition for Removal from the Circuit Court of Cook County
2. September 13, 1985              Order Motion of plaintiff to amend Complaint is granted
3. September 20, 1985              Notice of filing and Amended Complaint filed

\*Reproduced in the Appendix to the Petition for Certiorari.

4. November 22, 1985 Memorandum Order dated November 22, 1985, Defendant's Motion to Dismiss is Denied
5. December 10, 1987 Report and Recommendation of Magistrate Elaine E. Bucklo
6. March 17, 1988 Memorandum and Order
7. March 17, 1988 Judgment

United States Court of Appeals  
For the Seventh Circuit

1. April 12, 1988 Notice of Appeal Filed
2. April 28, 1989 Opinion
3. May 17, 1989 Order Extending time to file Petition for Rehearing
4. May 26, 1989 Petition for Rehearing with Suggestion for Rehearing En Banc
5. July 17, 1989 Order denying Petition for Rehearing with Suggestion for Rehearing En Banc

(Filed June 10, 1985)

IN THE  
CIRCUIT COURT OF COOK COUNTY, ILLINOIS  
COUNTY DEPARTMENT, LAW DIVISION

---

No. 85L11199

---

COLLEEN DONNELLY,  
Plaintiff,

vs.

YELLOW FREIGHT SYSTEMS, INC.  
Defendant.

PLEASE SERVE:

YELLOW FREIGHT SYSTEMS, INC.  
CT CORPORATION SYSTEM  
208 SOUTH LASALLE STREET  
CHICAGO, IL 60604

---

**SUMMONS**  
(Jury Demand)

To each defendant:

**YOU ARE SUMMONED** and required to file an answer in this case, or otherwise file your appearance in the office of the clerk of this court (located in the Richard J. Daley Center, Room\* 801, Chicago, Illinois 60602), within 30 days after service of this summons, not counting the day of service. **IF YOU FAIL TO DO SO, A JUDGMENT BY DEFAULT MAY BE TAKEN AGAINST YOU FOR**

THE RELIEF ASKED IN THE COMPLAINT, A COPY OF WHICH IS HERETO ATTACHED.

To the officer.

This summons must be returned by the officer or other person to whom it was given for service, with indorsement of service and fees, if any, immediately after service. If service cannot be made, this summons shall be returned so indorsed. This summons may not be served later than 30 days after its date.

WITNESS, MAY 22, 1985

/s/ Morgan M. Finley

Clerk of court

\* \* \*

Atty. No. 91872

Name JOHN J. HENELY, LTD.

Attorney for PLAINTIFF

Address TWO NORTH LASALLE STREET

City CHICAGO, IL 60602

Telephone 899-9090

\*Law Division Room 801

Chancery-Divorce Division Room 802

County Division Room 801

Probate Division Room 1202

(May 22, 1985)

STATE OF ILLINOIS )

) SS:

COUNTY OF COOK )

IN THE  
CIRCUIT COURT OF COOK COUNTY, ILLINOIS  
COUNTY DEPARTMENT, LAW DIVISION

\_\_\_\_\_  
No. 85L11199  
\_\_\_\_\_

COLLEEN DONNELLY,  
Plaintiff,

vs.

YELLOW FREIGHT SYSTEMS, INC.,  
Defendant.

\_\_\_\_\_  
COMPLAINT AT LAW  
PLAINTIFF DEMANDS TRIAL BY JURY  
COUNT I

Plaintiff, COLLEEN DONNELLY, complaining of the defendant, YELLOW FREIGHT SYSTEMS, INC., alleges and says:

1. This action arises under the provisions of the Illinois Human Rights Act (Ill. Rev. Stat. Ch. 68, Par. 1-101, *et seq.* 1983). This court has jurisdiction of this action pursuant to Plaintiff's exhaustion of administrative remedies with the Equal Employment Opportunity Commission and its subsequent issuance of Notice of Right to Sue, a copy of which is attached hereto as Exhibit A.



2. Plaintiff, COLLEEN DONNELLY is, and at all times herein mentioned was, a female resident of the Village of Chicago Ridge, County of Cook and State of Illinois.

3. Defendant, YELLOW FREIGHT SYSTEMS, INC., is, and at all times herein mentioned was, a foreign corporation engaged in the business of transporting goods as a motor carrier in interstate commerce with district offices and place of business located at or near 10301 South Harlem Avenue, Chicago Ridge, Cook County, Illinois.

4. At all relevant times, defendant has employed within Illinois twenty or more employees during twenty or more calendar weeks within the preceding year of the acts complained of herein. Defendant was and is, therefore, an employer within the meaning of Section 2-101(B)(1)(a) of the Human Rights Act (Ill. Rev. Stat. Ch. 68, Sec. 2-101(B)(1)(a)).

5. On or about November, 1982, Plaintiff sought employment at Defendant's place of business as a "loader."

6. Although Plaintiff was fully qualified for the applied for position, Defendant failed to hire Plaintiff on the basis of her sex and as such was in violation of the Human Rights Act, to wit:

- (a) Failed to hire Plaintiff on the basis of her sex, in violation of Sec. 2-102(A), Ch. 68 of the Ill. Rev. Stat.;
- (b) Failed to hire Plaintiff on the basis of her sex despite weekly repeated calls to Defendant requesting employment;
- (c) Failed to hire Plaintiff on the basis of her sex while Defendant continued to hire at least twenty-five

men since her application for employment was denied;

- (d) Failed to hire Plaintiff on the basis of her sex while hiring men even though her qualifications for the position(s) is similar or equal to those of the men hired.

7. On June 27, 1984, Defendant hired Plaintiff.

8. As a result of Defendant's failure to hire Plaintiff in its employ because of her sex, Plaintiff was caused to suffer unpaid wages and compensation, from November, 1982 to her ultimate hiring date of June 27, 1984 at Defendant's employ, in the sum of \$30,000.00, which sum would have been paid by Defendant to Plaintiff, but for Defendant's wrongful act.

WHEREFORE, Plaintiff prays as follows:

1. That this Court award Plaintiff the sum of \$30,000.00 as unpaid wages and compensation for the loss of wages she sustained from November, 1982 to June 27, 1984.

2. That this Court award Plaintiff retroactive seniority to that which she would be entitled to had she been hired in November, 1982, and such other fringe benefits as Plaintiff may have been denied.

3. That this Court award Plaintiff a reasonable amount for attorney's fees and costs of this action pursuant to Ill. Rev. Stat., Ch. 68, Sec. 8-108(G).

4. That this Court grant Plaintiff such other further relief as may be just, equitable, and make Plaintiff whole.

## COUNT II

Plaintiff, COLLEEN DONNELLY, complaining of Defendant, YELLOW FREIGHT SYSTEMS, INC., alleges and says:

1. This action arises under the provisions of the Illinois Human Rights Act (Ill. Rev. Stat. Ch. 68, Par. 1-101, *et seq.* 1983). This court has jurisdiction of this action pursuant to Plaintiff's exhaustion of administrative remedies with the Equal Employment Opportunity Commission and its subsequent issuance of Notice of Right to Sue, a copy of which is attached hereto as Exhibit B.

2. Plaintiff, COLLEEN DONNELLY is, and at all times herein mentioned was, a female resident of the Village of Chicago Ridge, County of Cook and State of Illinois.

3. Defendant, YELLOW FREIGHT SYSTEMS, INC., is, and at all times herein mentioned was, a foreign corporation engaged in the business of transporting goods as a motor carrier in interstate commerce with district offices and place of business located at or near 10301 South Harlem Avenue, Chicago Ridge, Cook County, Illinois.

4. At all relevant times, defendant has employed within Illinois twenty or more employees during twenty or more calendar weeks within the preceding year of the acts complained of herein. Defendant was, and is, therefore, an employer within the meaning of Section 2-101(B)(1)(a) of the Human Rights Act (Ill. Rev. Stat. Ch. 68, Sec. 2-101(B)(1)(a)).

5. On June 27, 1984, Plaintiff began employment with Defendant as a loader.

6. That since September 27, 1984, Defendant has engaged in conduct discriminating against Plaintiff on the basis of her sex, to wit:

- (a) As of September 27, 1984, Defendant restricted Plaintiff to two ten-minute breaks during working hours, whereas males are permitted two, fifteen-minute breaks and one fifteen minute wash-up break at the end of the day;
- (b) Defendant has restricted Plaintiff to two ten-minute breaks, although the union bargaining agreement calls for two fifteen-minute breaks and a wash-up break;
- (c) That Plaintiff, as the only female employed as loader is the only person in that position to receive said disparate treatment;
- (d) That Plaintiff has received no explanation for the difference in treatment;
- (e) That Plaintiff continues to receive other disparate treatment in her employment based upon her sex and with the intent to force her voluntary resignation from her employment;
- (f) That Defendant's disparate treatment was done in retaliation against Plaintiff for filing a charge of sex discrimination in failure to hire her, in violation of Sec. 6-101(A), Ch. 68 of the Illinois Human Rights Act. (Ill. Rev. Stat. Ch. 68, Sec. 6-101(A) 1983).

7. That as a result of Defendant's foregoing treatment, Plaintiff has suffered loss of actual damages and the full and equal enjoyment of the goods, services, facilities, privileges and advantages of the Defendant.

WHEREFORE, Plaintiff prays as follows:

- 1. That this Court award Plaintiff a sum of money for actual damages sustained as a result of Defendant's

unlawful sex discrimination, disparate treatment and continuing harassment.

2. That this Court enter an order compelling Defendant to cease and desist from any further unlawful discrimination.

3. That this Court award Plaintiff a reasonable amount for attorney's fees and costs of this action pursuant to Ill. Rev. Stat. Ch. 68, Sec. 8-108(G).

4. That this Court grant Plaintiff such other further relief as may be just, equitable and make Plaintiff whole.

/s/ Clifford & Henely, Ltd.  
Attorneys for Plaintiff

JOHN J. HENELY, LTD., 91872  
TWO NORTH LASALLE STREET  
CHICAGO, IL 60602  
312-899-9090

## PLAINTIFF'S EXHIBIT A

### EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

### NOTICE OF RIGHT TO SUE

*(Issued on Request)*

#### TO:

Ms. Colleen C. Donnelly  
9654 Nottingham  
Chicago Ridge, Illinois 60415

#### FROM:

Equal Employment Opportunity Commission  
536 South Clark Street  
Chicago, Illinois 60605

☐ On behalf of a person aggrieved whose identity is CONFIDENTIAL (29 C.F.R. 1601.7(a)).

#### CHARGE NUMBER

051841325

#### EEOC REPRESENTATIVE

Frank J. Keller

#### TELEPHONE NUMBER

(312) 886-0435

*(See Section 706(f)(1) and (f)(3) of the Civil Rights Act of 1964 and the other information on the reverse side of this form.)*

#### TO THE PERSON AGGRIEVED:

This is your NOTICE OF RIGHT TO SUE. It is issued at your request. If you intend to sue the respondent(s) named in your charge, YOU MUST DO SO WITHIN NINETY (90) DAYS OF YOUR RECEIPT OF THIS NOTICE: OTHERWISE YOUR RIGHT TO SUE IS LOST.



- ☒ More than 180 days have expired since the filing of this charge.
- ☐ Less than 180 days have expired since the filing of this charge, but I have determined that the Commission will be unable to complete its administrative process within 180 days from the filing of the charge.
- ☒ With the issuance of this Notice of Right to Sue, the Commission is terminating any further processing of this charge.
- ☐ It has been determined that the Commission will continue to process your charge.
- ☐ ADEA - While Title VII requires the Commission to issue a Notice of Right to Sue before you can bring suit under that law, you obtained the right to sue under the Age Discrimination in Employment Act (ADEA) when you filed your charge, subject to a 60-day waiting period. ADEA suits must be brought within 2 years (3 years in cases of willful violations) of the alleged discrimination.
- ☐ EPA - While Title VII requires the Commission to issue a Notice of Right to Sue before you can bring suit under that law, you already have the right to sue under the Equal Pay Act (EPA) (you are not required to complain to any administrative agency before bringing an EPA suit in court). EPA suits must be brought within 2 years (3 years in cases of willful violations) of the alleged EPA underpayment.

An information copy of this Notice of Right to Sue has been sent to the respondent(s) shown below.

Yellow Freight System  
10301 South Harlem Avenue  
Chicago Ridge, Illinois 60415

cc: (to respondent)                      On behalf of the Commission

☒ Copy of Charge

/s/ Kathleen M. Blunt                      Date 3-15-85  
Typed Name and Title  
of Issuing Official  
KATHLEEN M. BLUNT  
DISTRICT DIRECTOR

**PLAINTIFF'S EXHIBIT B****EQUAL EMPLOYMENT OPPORTUNITY COMMISSION****NOTICE OF RIGHT TO SUE***(Issued on Request)***TO:**

Ms. Colleen C. Donnelly  
 9654 Nottingham  
 Chicago Ridge, Illinois 60415

**FROM:**

Equal Employment Opportunity Commission  
 536 South Clark Street  
 Chicago, Illinois 60605

- ☐ On behalf of a person aggrieved whose identity is CONFIDENTIAL (29 C.F.R. 1601.7(a)).

**CHARGE NUMBER**

051850005

**EEOC REPRESENTATIVE**

Frank J. Keller

**TELEPHONE NUMBER**

(312) 886-0435

*(See Section 706(f)(1) and (f)(3) of the Civil Rights Act of 1964 and the other information on the reverse side of this form.)*

**TO THE PERSON AGGRIEVED:**

This is your NOTICE OF RIGHT TO SUE. It is issued at your request. If you intend to sue the respondent(s) named in your charge, YOU MUST DO SO WITHIN NINETY (90) DAYS OF YOUR RECEIPT OF THIS NOTICE: OTHERWISE YOUR RIGHT TO SUE IS LOST.

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- ☒ Less than 180 days have expired since the filing of this charge, but I have determined that the Commission will be unable to complete its administrative process within 180 days from the filing of the charge.
- ☒ With the issuance of this Notice of Right to Sue, the Commission is terminating any further processing of this charge.
- ☐ It has been determined that the Commission will continue to process your charge.
- ☐ ADEA - While Title VII requires the Commission to issue a Notice of Right to Sue before you can bring suit under that law, you obtained the right to sue under the Age Discrimination in Employment Act (ADEA) when you filed your charge, subject to a 60-day waiting period. ADEA suits must be brought within 2 years (3 years in cases of willful violations) of the alleged discrimination.
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Yellow Freight Systems  
10301 South Harlem Avenue  
Chicago Ridge, Illinois 60415

cc: (to respondent)      On behalf of the Commission

☒ Copy of Charge

/s/ Kathleen M. Blunt      Date 3-15-85  
Typed Name and Title  
of Issuing Official  
KATHLEEN M. BLUNT  
DISTRICT DIRECTOR

(June 28, 1985)

IN THE  
CIRCUIT COURT OF COOK COUNTY, ILLINOIS  
COUNTY DEPARTMENT, LAW DIVISION

---

No. 85 L 11199

#11

---

COLLEEN DONNELLY,  
Plaintiff,

vs.

YELLOW FREIGHT SYSTEMS,  
Defendant.

---

NOTICE OF MOTION

To: John J. Henely, Ltd.  
Two North LaSalle Street  
Chicago, IL 60602

On August 9, 1985 at 9:30 a.m., or soon thereafter as counsel may be heard, I shall appear before the Honorable William Quinlan, Room 2203 or any judge sitting in his stead, in the courtroom usually occupied by him in the Richard J. Daley Center, Chicago, Illinois, and then and there present the Defendant's Motion to Dismiss, a true and correct copy of which is attached hereto and herewith served upon you.

Name Steven J. Teplinsky, Esq.  
 BERMAN, FAGEL, HABER, MARAGOS  
 & ABRAMS  
 Address 140 S. Dearborn, Suite 1400  
 Telephone (312) 346-7500  
 Attorney for Defendant  
 City Chicago, Illinois 60603  
 Firm I.D. Number 90041

\* \* \*

### PROOF OF SERVICE BY MAIL

I, Carol A. Vosecky, a non-attorney, on oath state: I served this notice by mailing a copy to the above law firm at its designated address and depositing the same in the U.S. mail at 140 South Dearborn Street, Chicago, Illinois, at 5:00 p.m. on June 28, 1985, with proper postage prepaid.

/s/ Carol A. Vosecky

(If not the attorney)

Signed and sworn to before me June 28, 1985

/s/ Janie L. Gallina  
 Notary public

\* \* \*

(June 28, 1985)

IN THE  
 CIRCUIT COURT OF COOK COUNTY, ILLINOIS  
 COUNTY DEPARTMENT, LAW DIVISION

---

No. 85 L 11199

---

COLLEEN DONNELLY,  
 Plaintiff,

vs.

YELLOW FREIGHT SYSTEMS,  
 Defendant.

---

### MOTION TO DISMISS

Now comes Yellow Freight Systems, Inc. of Delaware, by its attorneys, Berman, Fagel, Haber, Maragos & Abrams, and moves this Court to dismiss the instant Complaint, with prejudice, pursuant to Section 2-615 of the Illinois Code of Civil Procedure. In support hereof, the following is submitted:

1. Plaintiff has filed a two-count Complaint alleging various violations of the Illinois Human Rights Act. (*Ill. Rev. Stat.*, Chapter 68, Paragraph 1-101 et seq.) Count I alleges employment discrimination based upon sex by Defendant's failure to hire Plaintiff as a "loader" from November, 1982 until June 27, 1984. Count II alleges employment discrimination based upon sex since September 22, 1984.

2. Plaintiff fails to state a cause of action as a matter of law and the Complaint must be dismissed with prejudice.



The case is brought pursuant to the Human Rights Act. It is well established that grievances under that Act come solely within the jurisdiction of the Illinois Human Rights Commission. Except by way of Administrative Review, the Courts of this state have no jurisdiction to grant relief for violations of the policies embodied in the Act. *Armstrong v. Freeman United Coal Mining Company*, 112 Ill.App.3d 1020, 1022-23 (3rd. 1983).

3. Although Plaintiff alleges that the Court has jurisdiction pursuant to her "exhaustion of administrative remedies", the Complaint is clear on its face that such an exhaustion of remedies has not occurred. Plaintiff specifically alleges an exhaustion of remedies with the "*Equal Opportunity Employment Commission*" and attaches a copy of the Right to Sue Notice issued by that agency. The Equal Employment Opportunity Commission, however, is an arm of the Federal Government, whose jurisdiction is founded in Title 42 of the U.S.C.A. Notwithstanding whatever actions Plaintiff might have taken with the Equal Employment Opportunity Commission, she has not alleged the filing of any complaint with the Illinois Department of Human Rights.

Plaintiff's failure to exhaust her administrative remedies pursuant to the Human Rights Act bars her from bringing a direct cause of action in this Court. *Dilley v. Americana Healthcare Corporation*, 129 Ill.App.3d 537 (4th. 1984); *Thakkar v. Wilson Enterprises*, 120 Ill.App.3d 878, 882 (1st. 1983).

Furthermore, Plaintiff is forever barred from properly bringing an action within the purview of the Human Rights Act, which provides that a charge of discrimination be filed within 180 days after the date that a civil rights violation has been committed. This 180-day filing requirement is jurisdictional and as Plaintiff has failed to timely

file (ever file) a complaint with the Department of Human Rights, she is forever barred. *Lee v. Human Rights Commission*, 126 Ill.App.3d 666 (1st. 1984); *Beane v. Millers Mutual Insurance Association of Alton*, 90 Ill.App.3d 258, 261 (5th. 1980).

WHEREFORE, for the above and foregoing reasons, Defendant requests this Court to dismiss the above Complaint with prejudice, and for its costs so wrongfully sustained.

YELLOW FREIGHT SYSTEMS, INC.  
OF DELAWARE

By: /s/ (Illegible)  
One of its Attorneys

Steven J. Teplinsky, Esq.  
BERMAN, FAGEL, HABER, MARAGOS  
& ABRAMS  
140 South Dearborn Street, Suite 1400  
Chicago, Illinois 60603  
(312) 346-7500  
I.D. No. 90041

(July 17, 1985)

IN THE  
CIRCUIT COURT OF COOK COUNTY, ILLINOIS

NO. 85 L 11199 (B)

COLLEEN DONNELLY,  
Plaintiff,

vs.

YELLOW FREIGHT SYSTEMS,  
Defendant.

NOTICE OF MOTION

To: Mr. Steven J. Teplinsky, Berman, Fagel, Haber,  
Maragos and Abrams, 140 South Dearborn Street, Chi-  
cago, IL 60603

On JULY 19, 1985 at 8:45 a.m., or soon thereafter as  
counsel may be heard, I shall appear before the Honorable  
JUDGE WILLIAM QUINLAN, or any judge sitting in his  
stead, in the courtroom usually occupied by him in ROOM  
2203, RICHARD J. DALEY CENTER, CHICAGO, Illi-  
nois, and present the Plaintiff's Motion to File Amended  
Complaint at Law, instant herewith served upon you.

Name JOHN J. HENELY, LTD.  
Address TWO NORTH LASALLE STREET  
Telephone 312-899-9090  
Attorney for PLAINTIFF  
City CHICAGO, IL 60602  
Atty No. 91872

Copy received JULY 17, 1985, at . . . . m.

BY: BERMAN, FAGEL, HABER,  
MARAGOS AND ABRAMS

PROOF OF SERVICE BY DELIVERY

I, MICHAEL RITCHIE, a non-attorney, on oath  
state: On July 17, 1985, I served this notice by delivering a  
copy personally to each person to whom it is directed.

(If not the attorney)

Signed and sworn to before me JULY 17, 1985,

Notary public

\* \* \*

(July 17, 1985)

STATE OF ILLINOIS )  
                           ) SS:  
 COUNTY OF COOK )

IN THE  
 CIRCUIT COURT OF COOK COUNTY, ILLINOIS  
 COUNTY DEPARTMENT, LAW DIVISION

---

 85 L 11199(B)
 

---

COLLEEN DONNELLY,  
 Plaintiff,

vs.

YELLOW FREIGHT SYSTEMS, INC.  
 Defendant.

---

**MOTION TO FILE AMENDED COMPLAINT AT LAW**

NOW COMES Plaintiff, COLLEEN DONNELLY, by her attorneys, JOHN J. HENELY, LTD., and moves this Honorable Court for the entry of an Order granting her leave to file her Amended Complaint at Law, instanter.

/s/ John J. Henely, Ltd.

ATTORNEYS FOR PLAINTIFF

JOHN J. HENELY, LTD., 91872  
 ATTORNEYS FOR PLAINTIFF  
 TWO NORTH LASALLE STREET  
 CHICAGO, IL 60602  
 312-899-9090

(July 17, 1985)

STATE OF ILLINOIS )  
                           ) SS:  
 COUNTY OF COOK )

IN THE  
 CIRCUIT COURT OF COOK COUNTY, ILLINOIS  
 COUNTY DEPARTMENT, LAW DIVISION

---

 NO. 85 L 11199(B)
 

---

COLLEEN DONNELLY,  
 Plaintiff,

vs.

YELLOW FREIGHT SYSTEMS, INC.,  
 Defendant.

---

**AMENDED COMPLAINT AT LAW****COUNT I**

Plaintiff, COLLEEN DONNELLY, complaining of the defendant, YELLOW FREIGHT SYSTEMS, INC., alleges and says:

1. This action arises under the provisions of the Illinois Human Rights Act (Ill. Rev. Stat. Ch. 68, Par. 1-101, *et seq.* 1983). This court has jurisdiction of this action pursuant to Plaintiff's exhaustion of administrative remedies with the Equal Employment Opportunity Commission and its subsequent issuance of Notice of Right to Sue, a copy of which is attached hereto as Exhibit A.

2. Plaintiff, COLLEEN DONNELLY is, and at all times herein mentioned was, a female resident of the Village of Chicago Ridge, County of Cook and State of Illinois.

3. Defendant, YELLOW FREIGHT SYSTEMS, INC., is, and at all times herein mentioned was, a foreign corporation engaged in the business of transporting goods as a motor carrier in interstate commerce with district offices and place of business located at or near 10301 South Harlem Avenue, Chicago Ridge, Cook County, Illinois.

4. At all relevant times, defendant has employed within Illinois twenty or more employees during twenty or more calendar weeks within the preceding year of the acts complained of herein. Defendant was and is, therefore, an employer within the meaning of Section 2-101(B)(1)(a) of the Human Rights Act (Ill. Rev. Stat. Ch. 68, Sec. 2-101(B)(1)(a)).

5. On or about November, 1982, Plaintiff sought employment at Defendant's place of business as a "loader."

6. Although Plaintiff was fully qualified for the applied for position, Defendant failed to hire Plaintiff on the basis of her sex and as such was in violation of the Human Rights Act, to wit:

- (a) Failed to hire Plaintiff on the basis of her sex, in violation of Sec. 2-102(A), Ch. 68 of the Ill. Rev. Stat.;
- (b) Failed to hire Plaintiff on the basis of her sex despite weekly repeated calls to Defendant requesting employment;
- (c) Failed to hire Plaintiff on the basis of her sex while Defendant continued to hire at least twenty-five

men since her application for employment was denied;

- (d) Failed to hire Plaintiff on the basis of her sex while hiring men even though her qualifications for the position(s) is similar or equal to those of the men hired.

7. On June 27, 1984, Defendant hired Plaintiff.

8. As a result of Defendant's failure to hire Plaintiff in its employ because of her sex, Plaintiff was caused to suffer unpaid wages and compensation, from November, 1982 to her ultimate hiring date of June 27, 1984 at Defendant's employ, in the sum of \$30,000.00, which sum would have been paid by Defendant to Plaintiff, but for Defendant's wrongful act.

WHEREFORE, Plaintiff prays as follows:

1. That this Court award Plaintiff the sum of \$30,000.00 as unpaid wages and compensation for the loss of wages she sustained from November, 1982 to June 27, 1984.

2. That this Court award Plaintiff retroactive seniority to that which she would be entitled to had she been hired in November, 1982, and such other fringe benefits as Plaintiff may have been denied.

3. That this Court award Plaintiff a reasonable amount for attorney's fees and costs of this action pursuant to Ill. Rev. Stat., Ch. 68, Sec. 8-108(G).

4. That this Court grant Plaintiff such other further relief as may be just, equitable, and make Plaintiff whole.

## COUNT II

Plaintiff, COLLEEN DONNELLY, complaining of Defendant, YELLOW FREIGHT SYSTEMS, INC., alleges and says:



1. This action arises under the provisions of the Illinois Human Rights Act (Ill. Rev. Stat. Ch. 68, Par. 1-101, *et seq.* 1983). This court has jurisdiction of this action pursuant to Plaintiff's exhaustion of administrative remedies with the Equal Employment Opportunity Commission and its subsequent issuance of Notice of Right to Sue, a copy of which is attached hereto as Exhibit B.

2. Plaintiff, COLLEEN DONNELLY is, and at all times herein mentioned was, a female resident of the Village of Chicago Ridge, County of Cook and State of Illinois.

3. Defendant, YELLOW FREIGHT SYSTEMS, INC., is, and at all times herein mentioned was, a foreign corporation engaged in the business of transporting goods as a motor carrier in interstate commerce with district offices and place of business located at or near 10301 South Harlem Avenue, Chicago Ridge, Cook County, Illinois.

4. At all relevant times, defendant has employed within Illinois twenty or more employees during twenty or more calendar weeks within the preceding year of the acts complained of herein. Defendant was, and is, therefore, an employer within the meaning of Section 2-101(B)(1)(a) of the Human Rights Act (Ill. Rev. Stat. Ch. 68, Sec. 2-101(B)(1)(a)).

5. On June 27, 1984, Plaintiff began employment with Defendant as a loader.

6. That since September 27, 1984, Defendant has engaged in conduct discriminating against Plaintiff on the basis of her sex, to wit:

- (a) As of September 27, 1984, Defendant restricted Plaintiff to two ten-minute breaks during working hours, whereas males are permitted two, fifteen-

minute breaks and one fifteen minute wash-up break at the end of the day;

- (b) Defendant has restricted Plaintiff to two ten-minute breaks, although the union bargaining agreement calls for two fifteen-minute breaks and a wash-up break;
- (c) That Plaintiff, as the only female employed as loader is the only person in that position to receive said disparate treatment;
- (d) That Plaintiff has received no explanation for the difference in treatment;
- (e) That Plaintiff continues to receive other disparate treatment in her employment based upon her sex and with the intent to force her voluntary resignation from her employment;
- (f) That Defendant's disparate treatment was done in retaliation against Plaintiff for filing a charge of sex discrimination in failure to hire her, in violation of Sec. 6-101(A), Ch. 68 of the Illinois Human Rights Act. (Ill. Rev. Stat. Ch. 68, Sec. 6-101(A) 1983).

7. That as a result of Defendant's foregoing treatment, Plaintiff has suffered loss of actual damages and the full and equal enjoyment of the goods, services, facilities, privileges and advantages of the Defendant.

WHEREFORE, Plaintiff prays as follows:

- 1. That this Court award Plaintiff a sum of money for actual damages sustained as a result of Defendant's unlawful sex discrimination, disparate treatment and continuing harassment.

2. That this Court enter an order compelling Defendant to cease and desist from any further unlawful discrimination.

3. That this Court award Plaintiff a reasonable amount for attorney's fees and costs of this action pursuant to Ill. Rev. Stat. Ch. 68, Sec. 8-108(G).

4. That this Court grant Plaintiff such other further relief as may be just, equitable and make Plaintiff whole.

### COUNT III

Plaintiff, COLLEEN DONNELLY, complaining of the Defendant, YELLOW FREIGHT SYSTEMS, INC., alleges and says:

1. This action arises under the provisions of 42 U.S.C. §§1981, 1983 and 1985 and Title VII of the 1964 Civil Rights Act 42 U.S.C. §2000(e) *et seq.* This Court has jurisdiction of this action pursuant to Plaintiff's exhaustion of administrative remedies with the Equal Employment Opportunity Commission and its subsequent issuance of Notice of Right to Sue, a copy of which is attached hereto as Exhibit A.

2. Plaintiff, COLLEEN DONNELLY is, and at all times herein mentioned was, a female resident of the Village of Chicago Ridge, County of Cook and State of Illinois.

3. Defendant, YELLOW FREIGHT SYSTEMS, INC., is, and at all times herein mentioned was, a foreign corporation engaged in the business of transporting goods as a motor carrier in interstate commerce with district offices and place of business located at or near 10301 South Harlem Avenue, Chicago Ridge, Cook County, Illinois.

4. At all relevant times, defendant has employed within Illinois fifteen or more employees during twenty or more calendar weeks within the preceding year of the acts complained of herein. Defendant was and is, therefore, an employer within the meaning of Section 2000(e)(b) of the 1964 Civil Rights Act (42 U.S.C. §2000(e)(b)).

5. On or about November, 1982, Plaintiff sought employment at Defendant's place of business as a "loader."

6. Although Plaintiff was fully qualified for the applied for position, Defendant failed to hire Plaintiff on the basis of her sex and as such was in violation of the Human Rights Act, to wit:

- (a) Failed to hire Plaintiff on the basis of her sex, in violation of Section 2000e-2(a)(1) of the 1964 Civil Rights Act;
- (b) Failed to hire Plaintiff on the basis of her sex despite weekly repeated calls to Defendant requesting employment;
- (c) Failed to hire Plaintiff on the basis of her sex while Defendant continued to hire at least twenty-five men since her application for employment was denied;
- (d) Failed to hire Plaintiff on the basis of her sex while hiring men, even though her qualifications for the position(s) are similar or equal to those of the men hired.

7. On June 27, 1985, Defendant hired Plaintiff.

8. As a result of Defendant's failure to hire Plaintiff in its employ because of her sex, Plaintiff was caused to suffer unpaid wages and compensation, from November, 1982 to her ultimate hiring date of June 27, 1984 at Defen-

dant's employ, in the sum of \$30,000.00, which sum would have been paid by Defendant to Plaintiff, but for Defendant's wrongful act.

WHEREFORE, Plaintiff prays as follows:

1. That this Court award Plaintiff the sum of \$30,000.00 as unpaid wages and compensation for the loss of wages she sustained from November, 1982 to June 27, 1984.
2. That this Court award Plaintiff retroactive seniority to that which she would be entitled to had she been hired in November, 1982, and such other fringe benefits as Plaintiff may have been denied.
3. That this Court award Plaintiff a reasonable amount for attorney's fees and costs of this action.
4. That this Court grant Plaintiff such other further relief as may be just, equitable, and make Plaintiff whole.

#### COUNT IV

Plaintiff, COLLEEN DONNELLY, complaining of Defendant, YELLOW FREIGHT SYSTEMS, INC., alleges and says:

1. This action arises under the provisions of 42 U.S.C. §§1981, 1983 and 1985 and Title VII of the 1964 Civil Rights Act, 42 U.S.C. §2000(e) *et seq.* This Court has jurisdiction of this action pursuant to Plaintiff's exhaustion of administrative remedies with the Equal Employment Opportunity Commission and its subsequent issuance of Notice of Right to Sue, a copy of which is attached hereto as Exhibit B.
2. Plaintiff, COLLEEN DONNELLY is, and at all times herein mentioned was, a female resident of the Village of Chicago Ridge, County of Cook and State of Illinois.

3. Defendant, YELLOW FREIGHT SYSTEMS, INC., is and at all times herein mentioned was, a foreign corporation engaged in the business of transporting goods as a motor carrier in interstate commerce with district offices and place of business located at or near 10301 South Harlem Avenue, Chicago Ridge, Cook County, Illinois.

4. At all relevant times, defendant has employed within Illinois fifteen or more employees during twenty or more calendar weeks within the preceding year of the acts complained of herein. Defendant was, and is, therefore, an employer within the meaning of Section 2000e(b) of the 1964 Civil Rights Act (42 U.S.C., §2000e(b)).

5. On June 27, 1984, Plaintiff began employment with Defendant as a loader.

6. That since September 27, 1984, Defendant has engaged in conduct discriminating against Plaintiff on the basis of her sex, to wit:

- (a) As of September 27, 1984, Defendant restricted Plaintiff to two ten-minute breaks during working hours, whereas males are permitted two, fifteen-minute breaks and one fifteen minute wash-up break at the end of the day, in violation of Section 2000 e-2(a)(2) of the 1964 Civil Rights Act;
- (b) Defendant has restricted Plaintiff to two ten-minute breaks, although the union bargaining agreement calls for two fifteen-minute breaks and a wash-up break, in violation of Section 2000 e-2 (a) (2) of the 1964 Civil Rights Act;
- (c) That Plaintiff, as the only female employed as loader is the only person in that position to receive said disparate treatment;



- (d) That Plaintiff has received no explanation for the difference in treatment;
- (e) That Plaintiff continues to receive other disparate treatment in her employment based upon her sex and with the intent to force her voluntary resignation from her employment;
- (f) That Defendant's disparate treatment was done in retaliation against Plaintiff for filing a charge of sex discrimination in failure to hire her, in violation of Section 2000e3(a) of the 1964 Civil Rights Act (42 U.S.C. §2000e-3(a)).

7. That as a result of Defendant's foregoing treatment, Plaintiff has suffered loss of actual damages and the full and equal enjoyment of the goods, services, facilities, privileges and advantages of the Defendant.

WHEREFORE, Plaintiff, prays as follows:

- 1. That this Court award Plaintiff a sum of money for actual damages sustained as a result of Defendant's unlawful sex discrimination, disparate treatment and continuing harassment.
- 2. That this Court enter an order compelling Defendant to cease and desist from any further unlawful discrimination.
- 3. That this Court award Plaintiff a reasonable amount for attorney's fees and costs of this action.
- 4. That this Court grant Plaintiff such other further relief as may be just, equitable and make Plaintiff whole.

/s/ John J. Henely, Ltd.  
Attorneys for Plaintiff

JOHN J. HENELY, LTD., 91872  
ATTORNEYS FOR PLAINTIFF  
TWO NORTH LASALLE STREET  
CHICAGO, IL 60602  
312-899-9090

Exhibits A and B were printed earlier in this Joint Appendix as attachments to the Complaint at Law (May 22, 1985), see pp. 11-16.



(July 23, 1985)

IN THE  
CIRCUIT COURT OF COOK COUNTY, ILLINOIS  
COUNTY DEPARTMENT, LAW DIVISION

---

No. 85 L 11199

---

COLLEEN DONNELLY,  
Plaintiff,

vs.

YELLOW FREIGHT SYSTEMS, INC.  
Defendant.

---

RESPONSE AND OBJECTION TO PLAINTIFF'S  
MOTION FOR LEAVE TO FILE  
AMENDED COMPLAINT

Now comes Yellow Freight Systems, Inc., by its attorneys, Berman, Fagel, Haber, Maragos & Abrams, and for its response and objection to Plaintiff's Motion for Leave to File Amended Complaint, states as follows:

**I. Counts I and II**

Counts I and II of Plaintiff's proposed Amended Complaint are absolutely identical to Plaintiff's original Complaint filed on May 22, 1985. Those counts are presently subject to Defendant's Motion to Dismiss with prejudice set for hearing on August 9, 1985. The basis of said motion is the failure of the Plaintiff to exhaust administrative remedies. As these counts in the Amended Complaint are no different than those already pending and subsequent to the pending motion, there is no reason to refile Counts I and II except to further delay disposition of Defendant's Motion.

**II. Counts III and IV.**

The proposed Amended Complaint seeks to add Counts III and IV. Both counts allege that:

"This action arises under the provisions of 42 U.S.C., Section 1981, 1983, and 1985 and Title VII of the 1964 Civil Rights Act 42 U.S.C., Section 2000 et seq. This Court has jurisdiction of this action pursuant to Plaintiff's exhaustion of administrative remedies with the Equal Employment Opportunity Commission and its subsequent issuance of Notice of Right to Sue. . .".

It is apparent upon a review of the proposed Amendment that this Court has no jurisdiction and that the proposed counts state no cognizable actions.

**A. Title VII Violations.**

The crux of Plaintiff's proposed Counts III and IV are that she has been discriminated in employment on the basis of her sex. Although she pleads sections 1981, 1983 and 1985 of 42 U.S.C., it is clear that her action, if any, is founded upon the purported Title VII violation. This Court, however, has no jurisdiction over Title VII actions in that jurisdiction is possessed *exclusively* by the Federal Courts. *Dyer v. Grief Bros, Inc.*, 755 F.2d 1391, 1393 (9th. 1985); *Valenzuela v. Kraft*, 739 F.2d 434 (9th. 1984).

**B. 42 U.S.C. 1981, 1983 and 1985.**

Plaintiff additionally states that the actions in Counts III and IV are also brought pursuant to 42 U.S.C. 1981, 1983 and 1985. Similarly, she fails to allege on the face of the Complaint any cause of action which would entitle her to proceed. 42 U.S.C. 1981 applies *only* to racial discrimination. *Waller v. International Harvester*, 578

F.Supp. 309, 314 (N.D. Ill. 1984); *Nichelson v. Quaker Oats*, 573 F.Supp. 1209, 1219 (W.D. Tenn. 1983). The proposed cause of action alleges only discrimination based upon sex.

Additionally, Plaintiff's proposed Amended Counts III and IV allege violations of 42 U.S.C. 1983. It is well established that suits brought pursuant to 1983 must be directed against actions done under color of state law, or state action. *Mitchum v. Foster*, 92 S. Ct. 2151, 2162. There is no 1983 liability for private persons. *Guedry v. Ford*, 431 F.2d 660, 664 (5th. 1970). The proposed Counts III and IV make no allegations of any state action, rather seek redress only against Defendant, a private corporation.

Finally, Plaintiff seeks to establish her causes of action pursuant to 42 U.S.C. 1985. The United States Supreme Court has stated, however, that 1985 may not be invoked to redress Title VII violations. *Great American Federal Savings & Loan v. Novotny*, 99 S. Ct. 2345, 2352. Furthermore, 1985 provides a remedy for *conspiracies* to deprive one's civil rights. Here, of course, there is no allegation of conspiracy and the proposed Complaint fails to state any action.

### III. Conclusion.

It is apparent that there exist no legal theories upon which any of the proposed remedies can state a cause of action, or that this Court even has jurisdiction. No reasons, therefore, exist to permit the filing of the Amended Complaint under these circumstances.

Respectfully submitted,

By: /s/ (Illegible)

Attorneys for Defendant

Leonard R. Kofkin, Esq.  
Steven J. Teplinsky, Esq.  
BERMAN, FAGEL, HABER, MARAGOS & ABRAMS  
140 South Dearborn Street, Suite 1400  
Chicago, Illinois 60603  
(312) 346-7500

I.D. No. 90041

### PROOF OF SERVICE BY MAIL

Steven J. Teplinsky (an attorney, certifies) being first duly sworn on oath, deposes and states that (s)he served the above and foregoing RESPONSE AND OBJECTION TO PLAINTIFF'S MOTION FOR LEAVE TO FILE AMENDED COMPLAINT to which this attached, by mailing a true and correct copy thereof to:

JOHN J. HENELY, LTD.  
Two North LaSalle Street  
Chicago, Illinois 60602

in an envelope addressed to each of them, postage prepaid, on the 26th day of July, 1985, in the U.S. Government mail at 140 S. Dearborn Street, Chicago, Illinois, before the hour of 5:00 p.m. on said date.

/s/ (Illegible)

Subscribed and Sworn to before me this 26th day of July, 1985.

/s/ Carol A. Vosecky  
Notary Public

• • •

(Received September 20, 1985)

IN THE  
DISTRICT COURT OF THE UNITED STATES FOR  
THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

---

No. 85 C 7195  
HONORABLE JUDGE LEIGHTON

---

COLLEEN DONNELLY,  
Plaintiff,

vs.

YELLOW FREIGHT SYSTEMS, INC.,  
Defendant.

---

**NOTICE OF FILING**

TO: Berman, Fagel, Haber, Maragos & Abrams, 140  
South Dearborn Street, Chicago, IL 60603

PLEASE TAKE NOTICE that on the 20th day of September, 1985, we filed with the Clerk of the United States District Court for the Northern District of Illinois, Eastern Division, the: Plaintiff's Amended Complaint at Law, a copy of which pleading is attached and served upon you.

/s/ John J. Henely, Ltd.  
JOHN J. HENELY, LTD.  
Attorneys for Plaintiff(s)  
75 EAST WACKER DRIVE  
SUITE 2200  
Chicago, Illinois 60602  
312-263-1733

The undersigned, being first duly sworn on oath, deposes and says that she served a copy of the above Notice, together with all necessary documents, upon the above-named attorney(s) by enclosing a true and correct copy thereof in a duly addressed, postage prepaid envelope, and depositing same in the U.S. Mail chute at Two North LaSalle Street, Chicago, Illinois, before the hour of 5:00 P.M. on the 20th day of September, 1985.

/s/ Cindy A. Sesso

SUBSCRIBED AND SWORN TO before me this 20th day of September, 1985.

/s/ (Illegible)

(Received September 20, 1985)  
 UNITED STATES DISTRICT COURT  
 NORTHERN DISTRICT OF ILLINOIS  
 EASTERN DIVISION

---

NO. 85 C 7195  
 HONORABLE JUDGE LEIGHTON

---

COLLEEN DONNELLY,  
 Plaintiff,

vs.

YELLOW FREIGHT SYSTEMS, INC.,  
 Defendant.

---

AMENDED COMPLAINT AT LAW  
 COUNT I

Plaintiff, COLLEEN DONNELLY, complaining of the Defendant, YELLOW FREIGHT SYSTEMS, INC., alleges and says:

1. This action arises under the provisions of Title VII of the 1964 Civil Rights Act 42 U.S.C., §2000(e) *et seq.* This Court has jurisdiction of this action pursuant to Plaintiff's exhaustion of administrative remedies with the Equal Employment Opportunity Commission and its subsequent issuance of Notice of Right to Sue, a copy of which is attached hereto as Exhibit A.

2. That this action is a removal by defendant of plaintiff's original action filed in the Circuit Court of Cook County, Court No. 85 L 11199 pursuant to 28 U.S.C. §1441(b),(C), filed on May 22, 1985 and Plaintiff's motion to file an Amended Complaint on August 9, 1985.

3. Plaintiff, COLLEEN DONNELLY is, and at all times herein mentioned was, a female resident of the Village of Chicago Ridge, County of Cook and State of Illinois.

4. Defendant, YELLOW FREIGHT SYSTEMS, INC., is, and at all times herein mentioned was, a foreign corporation engaged in the business of transporting goods as a motor carrier in interstate commerce with district offices and place of business located at or near 10301 South Harlem Avenue, Chicago Ridge, Cook County, Illinois.

5. At all relevant times, defendant has employed within Illinois fifteen or more employees during twenty or more calendar weeks within the preceding year of the acts complained of herein. Defendant was, and is, therefore, an employer within the meaning of Section 2000(e)(b) of the 1964 Civil Rights Act (42 U.S.C. §2000(e)(b)).

6. On or about November, 1982, Plaintiff sought employment at Defendant's place of business as a "loader."

7. Although Plaintiff was fully qualified for the applied-for position, Defendant failed to hire Plaintiff on the basis of her sex and as such was in violation of the Civil Rights Act, to wit:

- (a) Failed to hire Plaintiff on the basis of her sex, in violation of Section 2000e-2(a)(1) of the 1964 Civil Rights Act;
- (b) Failed to hire Plaintiff on the basis of her sex despite weekly repeated calls to Defendant requesting employment;
- (c) Failed to hire Plaintiff on the basis of her sex while Defendant continued to hire at least twenty-five men since her application for employment was denied;



(d) Failed to hire Plaintiff on the basis of her sex while hiring men, even though her qualifications for the position(s) are similar or equal to those of the men hired.

8. On June 27, 1984, Defendant hired Plaintiff.

9. As a result of Defendant's failure to hire Plaintiff in its employ because of her sex, Plaintiff was caused to suffer unpaid wages and compensation, from November, 1982 to her ultimate hiring date of June 27, 1984 at Defendant's employ, in the sum of \$30,000.00, which sum would have been paid by Defendant to Plaintiff, but for Defendant's wrongful act.

WHEREFORE, Plaintiff prays as follows:

1. That this Court award Plaintiff the sum of \$30,000.00 as unpaid wages and compensation for the loss of wages she sustained from November, 1982 to June 27, 1984.

2. That this Court award Plaintiff retroactive seniority to that which she would be entitled to had she been hired in November, 1982, and such other fringe benefits as Plaintiff may have been denied.

3. That this Court award Plaintiff a reasonable amount for attorney's fees and costs of this action.

4. That this Court grant Plaintiff such other further relief as may be just, equitable, and make Plaintiff whole.

## COUNT II

Plaintiff, COLLEEN DONNELLY, complaining of defendant, YELLOW FREIGHT SYSTEMS, INC., alleges and says:

1. This action arises under the provisions of Title VII of the 1964 Civil Rights Act, 42 U.S.C. §2000(e) *et seq.* This Court has jurisdiction of this action pursuant to Plaintiff's exhaustion of administrative remedies with the Equal Employment Opportunity Commission and its subsequent issuance of Notice of Right to Sue, a copy of which is attached hereto as Exhibit B.

2. That this action is a removal by defendant of plaintiff's original action filed in the Circuit Court of Cook County, Court No. 85 L 11199 pursuant to 28 U.S.C. §1441(b),(C), filed on May 22, 1985 and Plaintiff's motion to file an Amended Complaint on August 9, 1985.

3. Plaintiff, COLLEEN DONNELLY is, and at all times herein mentioned was, a female resident of the Village of Chicago Ridge, County of Cook and State of Illinois.

4. Defendant, YELLOW FREIGHT SYSTEMS, INC., is, and at all times herein mentioned was, a foreign corporation engaged in the business of transporting goods as a motor carrier in interstate commerce with district offices and place of business located at or near 10301 South Harlem Avenue, Chicago Ridge, Cook County, Illinois.

5. At all relevant times, defendant has employed within Illinois fifteen or more employees during twenty or more calendar weeks within the preceding year of the acts complained of herein. Defendant was, and is, therefore, an employer within the meaning of Section 2000e(b) of the 1964 Civil Rights Act (42 U.S.C., §2000 e(b)).

6. On June 27, 1984, Plaintiff began employment with Defendant as a loader.

7. That since September 27, 1984, Defendant has engaged in conduct discriminating against Plaintiff on the basis of her sex, to wit:

- (a) As of September 27, 1984, Defendant restricted Plaintiff to two ten-minute breaks during working hours, whereas males are permitted two, fifteen-minute breaks and one fifteen minute wash-up break at the end of the day, in violation of Section 2000 e-2(a)(2) of the 1964 Civil Rights Act;
  - (b) Defendant has restricted Plaintiff to two ten-minute breaks, although the union bargaining agreement calls for two fifteen-minute breaks and a wash-up break, in violation of Section 2000 e-2 (a)(2) of the 1964 Civil Rights Act;
  - (c) That Plaintiff, as the only female employed as loader is the only person in that position to receive said disparate treatment;
  - (d) That Plaintiff has received no explanation for the difference in treatment;
  - (e) That Plaintiff continues to receive other disparate treatment in her employment based upon her sex and with the intent to force her voluntary resignation from her employment;
  - (f) That Defendant's disparate treatment was done in retaliation against Plaintiff for filing a charge of sex discrimination in failure to hire her, in violation of Section 2000e-3(a) of the 1964 Civil Rights Act (42 U.S.C. §2000e-3(a)).
8. That as a result of Defendant's foregoing treatment, Plaintiff has suffered loss of actual damages and the full and equal enjoyment of the goods, services, facilities, privileges and advantages of the Defendant.

WHEREFORE, Plaintiff, prays as follows:

- 1. That this Court award Plaintiff a sum of money for actual damages sustained as a result of Defendant's

unlawful sex discrimination, disparate treatment and continuing harassment.

2. That this Court enter an order compelling Defendant to cease and desist from any further unlawful discrimination.

3. That this Court award Plaintiff a reasonable amount for attorney's fees and costs of this action.

4. That this Court grant Plaintiff such other further relief as may be just, equitable and make Plaintiff whole.

/s/ John J. Henely, Ltd.

Attorneys for Plaintiff

JOHN J. HENELY, LTD.  
ATTORNEYS FOR PLAINTIFF  
75 EAST WACKER DRIVE  
SUITE 2200  
CHICAGO, IL 60601  
312-263-1733

Exhibits A and B were printed earlier in this Joint Appendix as attachments to the Complaint at Law (May 22, 1985), see pp. 11-16.